

JUDGE RAKOFFUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**09 CIV 2641**-----X
FOX NEWS NETWORK, LLC,

Plaintiff,

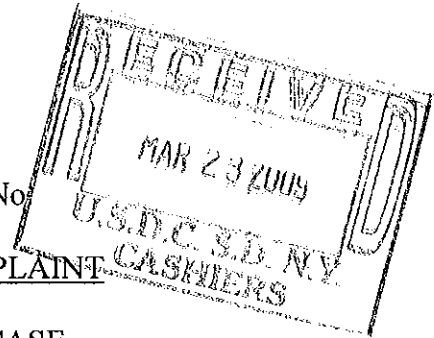
-against-

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,Defendant.
-----X

Case No.

COMPLAINT

ECF CASE

**INTRODUCTION**

1. Plaintiff Fox News Network, LLC, owner of the Fox Business Network (hereinafter, collectively referred to as "Fox Business") brings this action against defendant United States Securities and Exchange Commission (the "SEC"), an agency of the federal government, to vindicate its right under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to obtain government records regarding the SEC's past and current receipt of, and response to complaints, tips, or other information regarding potential violations of the securities laws or any other wrongdoing by R. Allen Stanford, Stanford Financial Group, and/or any of its affiliates (hereinafter, collectively referred to as "Stanford"). The present action concerns Fox Business's FOIA request, which was submitted to the SEC by overnight mail and facsimile on February 26, 2009 (the "FOIA Request").

2. The FOIA request included a request for "expedited processing" pursuant to 5 U.S.C. §552(a)(6)(E), because, as a member of the news media, Fox Business has a responsibility to inform the public about how individuals and entities, like Stanford, have been able to perpetrate massive financial frauds against the American public for decades while

escaping the notice of the SEC—the agency charged with the oversight of such broker-dealers and investment advisers.

3. The need to provide the public with the information contained in the requested records is especially urgent given the public's heightened concern about the integrity of the financial markets and the prevailing lack of confidence in those markets. This loss of public confidence is fueled by the perception that the government is not being forthright with the American public and therefore, has something to hide. There is a compelling and immediate need for the documents Fox Business has sought because the public would like to know how to avoid financial predators in the marketplace. In step with this need, public confidence depends upon the availability of information about the scope of the government's efforts to prevent investor fraud. Likewise, an informed public is essential to the national debate that is currently being conducted by the new administration and in Congress regarding what regulatory safeguards should be implemented and by whom they should be enforced.

4. Despite the obvious importance of this information and the even more obvious need for a timely response, the SEC did not respond to Fox Business's FOIA Request within the ten-day expedited period set forth in 5 U.S.C. § 552(a)(6)(E)(ii)(I), or the ten-business day expedited period set forth in 17 C.F.R. § 200.80(d)(5)(iii).

5. Fox Business has brought this action to obtain judicial relief from the SEC's continuing failure to respond to its FOIA Request.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552.

7. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Inasmuch as the SEC did not meet its legal duty to respond to Fox Business's FOIA Request within the required time, Fox Business is relieved of any obligation to exhaust administrative remedies and is now entitled to appeal directly to the Court to enforce the dictates of FOIA pursuant to 5 U.S.C. § 552(a)(6)(C).

THE PARTIES

9. Fox News Network, LLC, which owns Fox Business Network, is a Delaware limited liability company with its principal place of business located at 1211 Avenue of the Americas, New York, New York. The Fox Business Network is a 24/7 cable news network that disseminates business news and information ("Fox Business").

10. Defendant SEC is an agency of the United States and has possession and control of the records that Fox Business is seeking. The SEC's self-proclaimed mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. To that end, the SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. The SEC has the responsibility of promoting the disclosure of important market-related information, maintaining fair dealing, protecting against fraud and enforcing the securities laws. As such, the SEC is the agency charged with the oversight of broker-dealers and investment advisers like Stanford.

11. Fox Business submits that in light of the American public's stake as investors who turn to the markets to help secure their futures, the public is entitled to be informed of the manner in which the SEC protects the markets and investors from fraud and other violations of securities law.

FOX BUSINESS'S FOIA REQUEST

12. On February 26, 2009, Fox Business faxed and sent by UPS overnight mail the FOIA Request, which was entitled "Freedom of Information Act Request and Request for Expedited Processing." The FOIA Request was properly addressed to the Freedom of Information Act Officer, United States Securities and Exchange Commission, 100 "F" Street NE, Mail Stop 5100, Washington, D.C. 20549. The FOIA request was faxed to (202) 772-9337, the number listed by the SEC in 17 C.F.R. §200.80(d)(1). The fax confirmation receipt confirms that the SEC received the faxed FOIA Request on February 26, 2009. The UPS confirmation receipt confirms that the SEC received the copy of the FOIA Request sent by overnight mail on February 27, 2009.

13. The FOIA Request asks for all records maintained by the SEC

relating to any complaints, tips, or other information that the SEC received from any person at any time regarding potential violations of the securities laws or any other potential wrongdoing by R. Allen Stanford, or Stanford Financial Group and/or its affiliates, including but not limited to the SEC's response to such complaints, tips or information and any resulting audits, inquiries and/or investigations.

14. With respect to the request for expedited processing pursuant to 5 U.S.C.

§552(a)(6)(E)(v)(II), Fox Business stated in the FOIA Request that it is a member of the news media and is primarily engaged in the dissemination of information to the public as referred to in 5 U.S.C. § 552(a)(6)(E)(v)(II) and 17 C.F.R. §200.80(d)(5)(iii).

15. As to the urgency of its request, Fox Business stated:

Fox Business's request concerns matters of current exigency to the American public. Specifically, the American public has a compelling need to be immediately and fully informed about the SEC's past and current information of, and response to, what appears to be massive financial fraud. This information would not only assist the public in understanding how R. Allen Stanford and/or his companies and their affiliates was/were able to perpetuate his scheme and escape the

government's oversight, but it could very well lend insight into the ways that the next generation of investors can be protected from similar scams. At any rate, there is no doubt that the American public has a compelling need for the news media to disseminate the requested information so that the public can ensure that its interests are being safeguarded.

16. In addition to the foregoing, Fox Business "agree[d] to pay reasonable fees for the duplication of the requested records" and indicated that a response was expected "within ten (10) calendar days."

17. The SEC received the FOIA Request by fax on February 26, 2009. Consequently, the SEC was required to provide a response to Fox Business's request for expedited processing on or before March 9, 2009 pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I), or March 12, 2009 pursuant to 17 C.F.R. §200.80(d)(5)(iii).

18. The SEC failed to timely respond, and still has not responded to Fox Business's FOIA request or its request for expedited treatment.

FIRST CAUSE OF ACTION

*(For a Declaration that Fox Business is Entitled
to Expedited Processing of Its FOIA Request)*

19. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-18 as if fully set forth herein.

20. Fox Business is a member of the news media and is primarily engaged in the dissemination of information to the public as referred to in 5 U.S.C. § 552(a)(6)(E)(v)(II) and 17 C.F.R. §200.80(d)(5)(iii).

21. There exists a compelling need for and an urgency to inform the public about the information sought in Fox Business's FOIA Request as is required by 5 U.S.C. §552(a)(6)(E) and 17 C.F.R. §200.80(d)(5)(iii).

22. Fox Business has complied in all respects with the substantive and procedural rules governing a request for records under FOIA as required by 5 U.S.C. §552(a)(3).

23. As a result of the SEC's failure to meet its statutory deadlines under 5 U.S.C. § 552(a)(6)(E)(ii)(I), Fox Business is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

24. An actual and justiciable controversy exists as to whether the SEC has violated FOIA by failing to respond to Fox Business's request for expedited processing within the required time and by failing to grant Fox Business expedited processing for its FOIA Request.

25. As a result of the foregoing, Fox Business is entitled to a declaration that its FOIA Request be afforded expedited processing.

SECOND CAUSE OF ACTION

*(For an Injunction Compelling Expedited
Processing of Its FOIA Request)*

26. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-25 as if fully set forth herein.

27. As a result of the foregoing, Fox Business is entitled to an injunction compelling the SEC to afford its FOIA Request expedited processing.

THIRD CAUSE OF ACTION

*(For a Declaration that Fox Business is Entitled
to the Records Sought in Its FOIA Request)*

28. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-27 as if fully set forth herein.

29. Upon information and belief, the records sought in Fox Business's FOIA Request are in the custody and control of the SEC.

30. Upon information and belief, the records sought in Fox Business's FOIA Request are "reasonably describe[d]" as required by 5 U.S.C. §552(a)(3).

31. Upon information and belief, the records sought in Fox Business's FOIA requests are not subject to any of the exemptions from public disclosure that are set forth in 5 U.S.C. §552(b), 17 C.F.R. §800.20(b)(7)(i).

32. An actual and justiciable controversy exists in that the SEC has failed to disclose the records sought in Fox Business's FOIA Request although it has a statutory obligation to do so.

33. As a result of the foregoing, Fox Business is entitled to a declaration that the SEC is obligated to provide it with copies of the records sought in Fox Business's FOIA Request.

FOURTH CAUSE OF ACTION

*(For an Injunction Requiring the SEC to Comply
with Fox Business's FOIA Request on an Expedited Basis)*

34. Fox Business repeats and realleges all of the allegations contained in paragraphs 1-33 as if fully set forth herein.

35. As a result of the foregoing, Fox Business is entitled to an injunction compelling the SEC to provide Fox Business with copies of the records sought in its FOIA Request on an expedited basis.

REQUESTED RELIEF

WHEREFORE, Fox Business requests that the Court:

(A) Declare that Fox Business is entitled to the expedited processing of its FOIA Request;

(B) Issue an injunction compelling the SEC to expedite the processing of Fox Business's FOIA Request;

(C) Declare that the Fox Business is entitled to disclosure of the records sought in its FOIA Request;

(D) Issue an injunction compelling the SEC to produce the records requested in Fox Business's FOIA Request on an expedited basis;

(E) Award Fox Business reasonable attorney fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E)(i)-(ii); and

(F) Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
March 23, 2009

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